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In re Application of :
TANAKA, Izuru :
U.S. Application No.: 09/600, 925 :
PCT No.: PCT/JP99/06589 :
Int. Filing Date: 25 November 1999 :
Priority Date: 25 November 1998 :
Attorney Docket No.: 6715/60196 :
For: ELECTRONIC EQUIPMENT AND :
OPERATION CONTROL METHOD :
THEREOF :
:

DECISION ON PETITION

TO WITHDRAW HOLDING

OF ABANDONMENT

This decision is in response to applicant's "Petition for Revival . . ." ("Pet.") filed 22 September 2003. This is treated as a petition to withdraw the holding of abandonment. No fee is required.

BACKGROUND

On 08 August 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee pursuant to 37 CFR 1.492(e) was required. A one-month time limit in which to respond was set with extensions of time available.

On 13 November 2002, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) for failing to respond to the Form PCT/DO/EO/905 within the time period set therein.

On 22 September 2003, applicant filed the instant petition which was accompanied by, *inter alia*, a copy of a computer generated docket record; a declaration signed by the sole inventor; a check of \$110.00 for the petition to revive fee; a check of \$130.00 for the surcharge fee; and authorization to charge any additional fees to Deposit Account No. 03-3125.

DISCUSSION

Applicant filed the instant petition to revive the above-captioned application pursuant to 37 CFR 1.137(a) based on nonreceipt of an Office communication. Accordingly, this petition is being treated as a petition to withdraw the holding of abandonment. See § 711.03(c) Manual of Patent Examining Procedure (MPEP).

The \$110.00 petition fee will be credited to Deposit Account No. 03-3125.

Petition to Withdraw Holding of Abandonment

Petitioner claims that an incomplete address was most likely the reason that the Office communications were not received. This may be the case. Nevertheless, the petitioner must show that they did not receive these communications.

The showing required to establish the failure to receive an Office communication consists of: (1) a statement from the practitioner declaring that the Office communication was not received by the practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and, (3) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioners' statement.

In the petition, counsel states that "he did not receive the above-noted Notification of Missing Requirements or the Notice of Abandonment. A search of the file jacket and docket records confirms this fact." Pet. at ¶ 2.

These statements satisfy items (1) and (2) above.

Petitioner also submitted a copy of a computer docket sheet containing information on Docket Number 60196 only. A review of this docket record does not indicate that the Notification of Missing Requirements mailed 08 August 2000 or the Notification of Abandonment mailed 13 November 2002 was received. However, petitioner provided no explanation concerning this docket record in the instant petition. Moreover, this docket record does not satisfy the requirement outlined in § 711.03(c) of the MPEP which states, in part:

A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. (Emphasis added).

A single document containing only docket information on the U.S. application in question shows no other corroborating information to add weight and credibility to the information contained therein and can be too easily manipulated. In order to satisfy the docket record requirement to prove nonreceipt of an Office communication, applicant

must provide a copy of counsel's docket records for the date upon which a response to the Notification of Missing Requirements was due (i.e., 08 September 2002). An example of such a record would be a daily "tickler" report or a daily log showing all applications for which a response is due on that date. The docket report showing only the subject application does not satisfy this requirement.

Therefore, item (3) is not yet satisfied. Applicant has not met all of the requirements required to establish nonreceipt of an Office action.

CONCLUSION

Applicants' petition to withdraw the holding of abandonment is **DISMISSED** without prejudice.

The subject application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition for Withdrawing the Holding of Abandonment." No fee is required.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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